

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RESQNET.COM, INC.,

Plaintiff,

- against -

LANSA, INC.,

USDC SDNY  
DOCUMENT  
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01 Civ. 3578 (RWS)

MEMORANDUM OPINION

Defendant.

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**Sweet, D.J.**

Plaintiff ResQNet.com, Inc. ("ResQNet") has moved for entry of a damages award and final judgment in this patent infringement action, following the Federal Circuit's decision vacating this Court's damages award and remanding for redetermination of damages excluding certain evidence relied upon by ResQNet's expert, Dr. Jesse David. For the foregoing reasons, the motion is denied.

A hearing to determine an appropriate royalty rate will be scheduled to occur within 60 days. The parties are directed to exchange prehearing briefs in 45 days and any in limine motions will be returnable in 55 days.

**Prior Proceedings**

The relevant facts and history of this proceeding are set forth in detail in the Court's earlier Opinions. See ResQNet.com, Inc. v. Lansa, Inc., No. 01 Civ. 3578 (RWS), 2002 WL 310028011 (S.D.N.Y. Sept. 5, 2002); ResQNet.com, Inc. v. Lansa, Inc., 382 F. Supp. 2d 424 (S.D.N.Y. 2005); ResQNet.com, Inc. v. Lansa, Inc., 533 F. Supp. 2d 397 (S.D.N.Y. 2008); ResQNet.com, Inc. v. Lansa, Inc., No. 01 Civ. 3578 (RWS), 2008 WL 4376367 (S.D.N.Y. 2008). Familiarity with those Opinions is assumed.

On February 5, 2010, the Federal Circuit affirmed this Court's rulings on the issues of validity and infringement, reversed the imposition of sanctions against ResQNet, vacated the damages award, and remanded "for a recalculation of a reasonable royalty." ResQNet.com, Inc. v. Lansa, Inc., 594 F.3d 860, 873 (Fed. Cir. 2010). The Federal Circuit found that ResQNet failed "to persuade the court with legally sufficient evidence regarding an appropriate reasonable royalty." Id. at 872. Specifically, the Federal Circuit found that ResQNet's expert witness, Dr. David, impermissibly relied on unrelated licenses to inflate his royalty recommendation. Id.

On April 12, 2010, ResQNet filed a motion seeking a recalculation of a reasonable royalty based on the remaining evidence in the trial record. In its opposition, Defendant Lansa, Inc. ("Lansa") contended that the Federal Circuit's mandate requires a new trial on damages, because the exclusion of the evidence relied upon by Dr. David leaves the Court with no reliable evidence upon which a recalculation of a reasonable royalty could be based.

The instant motion was marked fully submitted on May 26, 2010.

**A Hearing on Damages Is Required**

ResQNet has the burden of proof "to persuade the court with legally sufficient evidence regarding an appropriate reasonably royalty." Id. at 872. The royalty rate entered after trial was based on the expert testimony of Dr. David. Without Dr. David's testimony, a hearing on damages is required, at which time ResQNet and Lansa may submit relevant and reliable evidence on the issue of a reasonable royalty.

Conclusion

For the reasons set forth above, ResQNet's motion is denied and a new hearing on the issue of a reasonable royalty will be scheduled to occur within 60 days. The parties are directed to exchange prehearing briefs in 45 days and any in limine motions will be returnable in 55 days, subject to any agreement the parties may reach on a revised schedule.

It is so ordered.

New York, NY  
August 9, 2010

  
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ROBERT W. SWEET  
U.S.D.J.